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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Mar 24, 2021

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

2:20-CR-6-WFN

v.

Plea Agreement

KENT KIMBERLING,

Defendant.

Plaintiff, United States of America, by and through William D. Hyslop, United States Attorney for the Eastern District of Washington, and Patrick J. Cashman, Assistant United States Attorney for the Eastern District of Washington, and Defendant Kent Kimberling and the Defendant's counsels, Molly Winston and Amy Rubin, agree to the following Plea Agreement:

1) Guilty Plea and Maximum Statutory Penalties:

The Defendant agrees to plead guilty to sole count of the Indictment filed on January 22, 2020, charging the Defendant with Possession of Unregistered Destructive Devices, in violation of 26 U.S.C. §§ 5841, 5861(d), 5871. The Defendant, understands that the charge contained in the Indictment is a Class C Felony. The Defendant also understands that the maximum statutory penalty for Possession of Unregistered Destructive Devices, in violation of 26 U.S.C. §§ 5841, 5861(d), 5871, is: (1) not more than 10 years imprisonment; (2) a fine not to exceed \$250,000; (3) a

1 term of supervised release of not more than 3 years; and (4) a \$100 special penalty
2 assessment.

3 The Defendant understands that a violation of a condition of supervised release
4 carries an additional penalty of re-imprisonment for up to two years.

5 2) The Court is Not a Party to the Agreement:

6 The Court is not a party to this Plea Agreement and may accept or reject this
7 Plea Agreement. Sentencing is a matter that is solely within the discretion of the
8 Court. The Defendant understands that the Court is under no obligation to accept any
9 recommendations made by the United States and/or by the Defendant; that the Court
10 will obtain an independent report and sentencing recommendation from the U.S.
11 Probation Office; and that the Court may, in its discretion, impose any sentence it
12 deems appropriate up to the statutory maximums stated in this Plea Agreement.
13 The Defendant acknowledges that no promises of any type have been made to the
14 Defendant with respect to the sentence the Court will impose in this matter. The
15 Defendant understands that the Court is required to consider the applicable sentencing
16 guideline range, but may depart upward or downward under the appropriate
17 circumstances.

18 The Defendant also understands that should the sentencing judge decide not to
19 accept any of the parties' recommendations, that decision is not a basis for
20 withdrawing from this Plea Agreement or a basis for withdrawing this plea of guilty.

21 3) Waiver of Constitutional Rights:

22 The Defendant understands that by entering this plea of guilty the Defendant is
23 knowingly and voluntarily waiving certain constitutional rights, including:

- 24 a) The right to a jury trial;
- 25 b) The right to see, hear and question the witnesses;
- 26 c) The right to remain silent at trial;
- 27 d) The right to testify at trial; and
- 28 e) The right to compel witnesses to testify.

1 While the Defendant is waiving certain constitutional rights, the Defendant
2 understands the Defendant retains the right to be assisted through the sentencing and
3 any direct appeal of the conviction and sentence by an attorney, who will be appointed
4 at no cost if the Defendant cannot afford to hire an attorney. The Defendant also
5 acknowledges that any pretrial motions currently pending before the Court are waived.

6 4) Elements of the Offense:

7 The United States and the Defendant agree that in order to convict the
8 Defendant of Possession of Unregistered Destructive Devices, in violation of 26
9 U.S.C. §§ 5841, 5861(d), 5871, the United States would have to prove beyond a
10 reasonable doubt the following elements:

11 *First*, on or about August 6, 2019, the Defendant, in the Eastern District of
12 Washington, knowingly possessed a National Firearms Act firearm;

13 *Second*, the firearms was a red, white, and blue, cannon destructive device
14 having a bore diameter in excess of one-half inch; and an improvised explosive
15 projectile further described as a small metal compressed carbon dioxide gas
16 cartridge and soda can;

17 *Third*, the Defendant knew of the characteristics of the firearm, that is, that it
18 was a destructive device with a bore diameter greater than one-half inch and
19 and an improvised explosive projectile;

20 *Fourth*, the firearm was or could readily have been put in operating condition;
21 and

22 *Fifth*, the firearm was not registered to the Defendant in the National Firearms
23 Registration and Transfer Record.

24 5) Factual Basis and Statement of Facts:

25 The United States and the Defendant stipulate and agree that the following facts
26 are accurate; that the United States could prove these facts beyond a reasonable doubt
27 at trial; and these facts constitute an adequate factual basis for Defendant's guilty plea.
28 This statement of facts does not preclude either party from presenting and arguing, for

1 sentencing purposes, additional facts which are relevant to the guideline computation
2 or sentencing, unless otherwise prohibited in this agreement.

3 On August 6, 2019, Sheriff Myers made contact with the Defendant. The
4 Defendant was taken into protective custody for a wellness check. After the Defendant
5 was taken into custody, Sheriff Myers informed Chief Neumann that a cannon was
6 located in the garage and it appeared to be loaded.

7 On August 6, 2019, Chief Neumann and Garfield Public Works Director Shawn
8 Clark arrived at Mary Lou Kimberling's house at 804 North 1st Street, Garfield,
9 Washington. Ms. Kimberling took the officers to the garage and showed them where
10 the cannon was. On August 7, 2019, Special Agents from the Bureau of Alcohol,
11 Tobacco, Firearms and Explosives ("ATF") reviewed the physical evidence. Also
12 present with ATF were members of the Spokane Bomb Squad. Upon examination of
13 the items, both physical and x-ray, the Bomb Squad conducted controlled burns and
14 test fires of the cannon and various munitions. A video of the cannon, shows the
15 cannon being ignited and subsequently ejecting a projectile into a target, leaving a
16 large hole in the center of the target.

17 After reviewing the evidence, SA Wihera conducted a custodial interview of the
18 Defendant. Prior to asking the Defendant any questions, SA Wihera advised him of
19 his *Miranda* warnings, which the Defendant waived. The Defendant stated that he
20 built the cannons found by the police at his mother's house. The Defendant stated
21 numerous times that he believed the Police and Police Chief were out to get him and
22 that the Town of Garfield is corrupt. The Defendant described himself as having
23 triggered schizophrenic tendencies. He also said he was not seeing a doctor or
24 receiving treatment at that time. The Defendant stated that everything law
25 enforcement found was "legal."

26 On August 8, 2019, SA Wihera measured the bore of the homemade cannon. SA
27 Wihera observed that the overall diameter was approximately 1 7/8 inch and the
28

1 thickness of the barrel was approximately 5/16". SA Wihera determined that the bore
2 of the canon was approximately 1 1/4".

3 On November 13, 2019, ATF Firearms and Explosive Laboratory conducted a
4 destructive device analysis of the cannon. It was Senior Explosives Enforcement
5 Officer Brennan S. Phillip's opinion that the cannon was a destructed device because
6 it had a bore greater than one-half inch. The Defendant further stipulates that the
7 small metal compressed cartridge and soda can was an improvised explosive
8 projectile.

9 Both destructive devices were not registered to the Defendant in the National
10 Firearms Registration and Transfer Record.

11 6) The United States Agrees Not to File Additional Charges:

12 The United States Attorney's Office for the Eastern District of Washington
13 agrees not to bring any additional charges against the Defendant based upon
14 information in its possession at the time of this Plea Agreement and arising out of
15 Defendant's conduct involving illegal activity charged in this Indictment, unless the
16 Defendant breaches this Plea Agreement any time before or after sentencing.

17 7) United States Sentencing Guideline Calculations:

18 The Defendant understands and acknowledges that the United States Sentencing
19 Guidelines (hereinafter USSG) are applicable to this case and that the Court will
20 determine the Defendant's applicable sentencing guideline range at the time of
21 sentencing.

22 a) Base Offense Level:

23 The United States and the Defendant agree that the base offense level for
24 Possession of Unregistered Destructive Devices, in violation of 26 U.S.C. §§ 5841,
25 5861(d), 5871 is 18. *See* USSG §2K2.1(a)(5).

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28 //

1 b) Specific Offense Characteristics:

2 The United States will argue that the base offense is increased by an additional
3 four (4) levels because the Defendant possessed between eight and twenty-four
4 firearms. *See* USSG §2K2.1(b)(1)(B).

5 Additionally, the United States will argue that the base offense is increased by
6 an additional two (2) levels because the devices were destructive devices. *See* USSG
7 §2K2.1(b)(3)(B).

8 Defendant reserves the right to object to each of these special offense
9 characteristics. The United States agrees not to seek the application of any other
10 specific offense characteristics or enhancements.

11 c) Acceptance of Responsibility:

12 If the Defendant pleads guilty and demonstrates a recognition and an
13 affirmative acceptance of personal responsibility for the criminal conduct; provides
14 complete and accurate information during the sentencing process; does not commit
15 any obstructive conduct; accepts this Plea Agreement; and enters a plea of guilty no
16 later than March 24, 2021, the United States will move for a three (3) level downward
17 adjustment in the offense level for the Defendant's timely acceptance of
18 responsibility, pursuant to USSG §3E1.1(a) and (b).

19 The Defendant and the United States agree that the United States may at its
20 option and upon written notice to the Defendant, not recommend a three (3) level
21 downward reduction for acceptance of responsibility if, prior to the imposition of
22 sentence, the Defendant is charged or convicted of any criminal offense whatsoever or
23 if the Defendant tests positive for any controlled substance.

24 d) Adjusted Offense Level:

25 The United States believes Defendant's final adjusted offense level would be
26 twenty-one (21).

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1 e) Criminal History:

2 The United States and the Defendant understand that the Defendant's criminal
3 history computation is tentative and that ultimately the Defendant's criminal history
4 category will be determined by the Court after review of the Presentence Investigative
5 Report. The United States and the Defendant have made no agreement and make no
6 representations as to the criminal history category, which shall be determined after the
7 Presentence Investigation Report is completed.

8 8) Departures/Variance:

9 The Defendant intends to request a downward departure/variance from the
10 sentencing guidelines. The United States reserves its right to oppose any downward
11 departure/variance.

12 9) Incarceration:

13 The United States agrees to recommend that the Court impose a sentence no
14 greater than the low end of the applicable sentencing guideline range as determined by
15 the Court at the time of sentencing. The Defendant may argue for any legal sentence
16 he deems appropriate. However, Mr. Kimberling reserves the right to appeal if the
17 Court sentences him to anything greater than 24 months.

18 10) Criminal Fine:

19 The United States and the Defendant agree to recommend no criminal fine.

20 11) Supervised Release:

21 The United States and the Defendant agree to recommend that the Court impose
22 a 3 year term of supervised release to include the following special conditions, in
23 addition to the standard conditions of supervised release:

24 a) that the Defendant participate and complete such drug testing and drug
25 treatment programs as the Probation Officer directs; and

26 b) that the Defendant complete mental health evaluations and treatment,
27 including taking medications prescribed by the treatment provider. The Defendant
28 shall allow reciprocal release of information between the Probation Officer and the

1 treatment provider. The Defendant shall contribute to the cost of treatment according
2 to the Defendant's ability.

3 c) that the Defendant's person, residence, office, vehicle, and belongings are
4 subject to search at the direction of the Probation Officer.

5 12) Mandatory Special Penalty Assessment:

6 The Defendant agrees to pay the \$100 mandatory special penalty assessment to
7 the Clerk of Court for the Eastern District of Washington, at or before sentencing,
8 pursuant to 18 U.S.C. § 3013 and shall provide a receipt from the Clerk to the United
9 States before sentencing as proof of this payment.

10 13) Payments While Incarcerated:

11 If the Defendant lacks the financial resources to pay the monetary obligations
12 imposed by the Court, the Defendant agrees to earn the money to pay toward these
13 obligations by participating in the Bureau of Prisons Inmate Financial Responsibility
14 Program.

15 14) Administrative Forfeiture:

16 The Defendant agrees to voluntarily forfeit any and all right, title, and interest
17 he has in any and all firearms and other assets seized by the Bureau of Alcohol,
18 Tobacco, Firearms and Explosives (ATF), on or about August 6, 2019, in favor of
19 ATF. The assets to be administratively forfeited include, but are not limited to, the
20 following:

- 21 - A Savage 110 .243 caliber rifle, SN: 67819;
 - 22 - A Harrington & Richardson Topper 58 .410 caliber shotgun, SN:
23 AN216287;
 - 24 - A Ruger 10/22 .22 caliber rifle, SN: 116-28013;
 - 25 - A Tanfoglio F. LLI, SNC Easa .22 caliber revolver, SN: E26607;
 - 26 - A Ruger Single Six .22 caliber revolver, SN 63-41830; and,
 - 27 - A Rohm RG66 .22 caliber revolver, SN IC288032.
- 28

1 The Defendant hereby withdraws his claim and petition submitted in
2 ATF's administrative forfeiture action and agrees not to contest the forfeiture of
3 the assets in the administrative forfeiture proceedings initiated against said
4 assets by ATF. Defendant hereby agrees to execute any and all forms,
5 documents, and pleadings, if necessary, to effectuate the administrative
6 forfeiture of any assets seized by ATF in this matter. Defendant consents to the
7 forfeiture, destruction, and/or return of assets to lawful owners, without further
8 notice.

9 The Defendant agrees to hold all law enforcement agents and the United
10 States, its agents, and its employees harmless from any claims whatsoever
11 arising in connection with the seizure, forfeiture, destruction or return to lawful
12 owner, of any asset(s) covered by this agreement.

13 15) Additional Violations of Law Can Void Plea Agreement:

14 The Defendant and the United States agree that the United States may at its
15 option and upon written notice to the Defendant, withdraw from this Plea Agreement
16 or modify its recommendation for sentence if, prior to the imposition of sentence, the
17 Defendant is charged or convicted of any criminal offense whatsoever or if the
18 Defendant tests positive for any controlled substance.

19 16) Appeal Rights:

20 In return for the concessions that the United States has made in this plea
21 agreement the Defendant agrees to waive his right to appeal his sentence if the Court
22 sentences the Defendant to a term of incarceration of 24 months or less; and a term of
23 supervised release of 3 years or less.

24 Defendant further expressly waives his right to file any post-conviction motion
25 attacking his conviction and sentence, including a motion pursuant to 28 U.S.C. §
26 2255, except one based upon ineffective assistance of counsel based on information
27 not now known by Defendant and which, in the exercise of due diligence, could not be
28 known by Defendant by the time the Court imposes the sentence.

Should this conviction be set aside, reversed, or vacated, this Plea Agreement is null and void and the United States may institute or re-institute any charges against the Defendant and make derivative use of any statements or information the Defendant has provided.

However, nothing precludes the United States or the Defendant from appealing an illegal sentence or one not in accordance with the correct application of the sentencing guidelines, consistent with the terms of this plea.

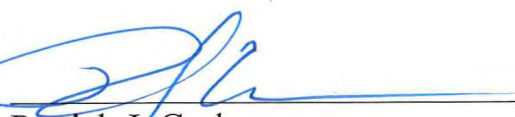
17) Integration Clause:

The United States and the Defendant acknowledge that this document constitutes the entire Plea Agreement between the United States and the Defendant, and no other promises, agreements, or conditions exist between the United States and the Defendant concerning the resolution of the case. This Plea Agreement is binding only upon the United States Attorney's Office for the Eastern District of Washington, and cannot bind other federal, state or local authorities. The United States and the Defendant agree that this agreement cannot be modified except in a writing that is signed by the United States and the Defendant.

Approvals and Signatures

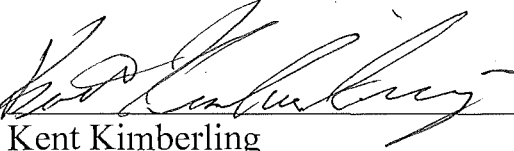
Agreed and submitted on behalf of the United States Attorney's Office for the Eastern District of Washington.

Joseph H. Harrington
Acting United States Attorney


Patrick J. Cashman
Assistant U.S. Attorney

3/23/2021
Date

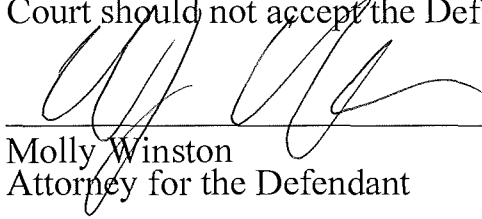
1
2 I have read this Plea Agreement and have carefully reviewed and discussed
3 every part of the agreement with my attorney. I understand and voluntarily enter into
4 this Plea Agreement. Furthermore, I have consulted with my attorney about my
5 rights, I understand those rights, and I am satisfied with the representation of my
6 attorney in this case. No other promises or inducements have been made to me, other
7 than those contained in this Plea Agreement and no one has threatened or forced me in
8 any way to enter into this Plea Agreement. I am agreeing to plead guilty because I am
9 guilty.

10
11 

12 Kent Kimberling
13 Defendant

3-24-21
Date

14 I have read the Plea Agreement and have discussed the contents of the
15 agreement with my client. The Plea Agreement accurately and completely sets forth
16 the entirety of the agreement between the parties. I concur in my client's decision to
17 plead guilty as set forth in the Plea Agreement. There is no legal reason why the
18 Court should not accept the Defendant's plea of guilty.

19
20 

21 Molly Winston
22 Attorney for the Defendant

3/24/21
Date